

Decision for dispute CAC-UDRP-105106

Case number CAC-UDRP-105106

Time of filing 2022-12-29 10:16:57

Domain names MOONEYFINACE.COM

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Mooney S.p.A.

Complainant representative

Organization Perani Pozzi Associati

Respondent

Name Mario Arias

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks consisting of the term "MOONEY" including (i) the Italian word trademark MOONEY® n° 302020000038617 registered 07 October 2020 in classes 09, 36, 37, 38 & 42, (ii) the European word trademark MOONEY® n° 018248141 registered 16 September 2020 in classes 09, 36, 37 & 38 and (iii) the European word trademark MOONEY® n° 018656425 registered 30 June 2022 in classes 12, 25 & 41.

Further, the Complainant operates its business using the official website <www.mooney.it>.

FACTUAL BACKGROUND

The Complainant is an Italian company since December 2019, resulting from the agreement between SisalPay and Banca 5 (Intesa Sanpaolo Group). Complainant offers services related to payments. Complainant boasts a network of over 45,000 points of sale - tobacconists, bars and newsstands - and modern digital platforms. Complainant offers millions of people a phygital experience, with a range of services integrated between physical and digital channels.

On 28 October 2022, the Respondent mario arias, an individual located in Benin, registered the disputed domain name <mooneyfinace.com>.

The disputed domain name resolves to a website promoting financial services including loans and displaying the trademark "MOONEY FINANCE".

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

The facts asserted by the Complainant are not contested by the Respondent because no Response was filed.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

THREE ELEMENTS COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term MOONEY for financial services, paytech and more. Such trademark rights were created and registered prior to 28 October 2022, the creation date of the disputed domain name. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to

satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its MOONEY trademark such that it has standing under the Policy.

UDRP panels have held that where the asserted trademark is recognizable within a disputed domain name, the addition of a descriptive, generic or geographical term does not prevent a finding of confusing similarity. In the present case, the disputed domain name consists of the MOONEY trademark reproduced in its entirety, with the addition of the generic term "FINACE" apparently a typo variant on the word "finance". The trademark MOONEY remains prominent, and the combination with "FINACE" infers that the domain name is somehow connected with the owner of the MOONEY trademark, an established brand in the finance sector.

The TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is confusingly similar to Complainant's mark.

(B) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The second element of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

However, the burden of proof still remains with the Complainant to make out its prima facie case on a balance of probabilities; see, for example, CAC Case No. 102263, Intesa Sanpaolo S.p.A. v Ida Ekkert. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the disputed domain name. Simply establishing that the complainant also has rights in the disputed domain name is insufficient.

In the present case, the Complainant asserts that the Respondent is not commonly known by the disputed domain name, is not in any way related to the Complainant, nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. This has not been contested by the Respondent. Instead, the Respondent has not responded in any form and thus has failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Further, there is no apparent evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. A domain name connected with a bona fide offer of goods or services would almost certainly use the correct term "finance" rather than the typo variant "finace". According to unrefuted evidence submitted by the Complainant, the disputed domain name resolved to a website, where the Complainant's trademark MOONEY is prominently displayed in connection with financial services. Although the website to which the disputed domain name purports to promote financial services, wording at the bottom of the page states "Hotel Pagoda Lite" indicating that the site is not legitimate as these words have nothing to do with the purported services being offered. It is well accepted that a panel may undertake limited factual research into matters of public record in the proper discharge of its duties and obligations under the general powers of a panel articulated in paragraphs 10 and 12 of the UDRP Rules - applicable to this proceeding. Such limited factual research may include visiting the website linked to the disputed domain name to obtain more information about the respondent's use of the disputed domain name. Pursuant to this power, this Panel reviewed the website associated with the disputed domain name and the Complainant's own website, and found that some of the text from Complainant's English language website has been reproduced almost identically in the English language version of the website associated with the disputed domain name as shown in the table below:

Text on Complainant's Website	Text on Website Associated with the disputed domain name
Thanks to our investment in our team's talents, competencies, and technology , we stand out as one of Italy's leading paytech companies when it comes to digital innovation in the payment industry. To us, Open Innovation is not only perfectly in line with our core values, but it is also key to succeeding in a market as brutally competitive and constantly evolving as the payment industry is.	Thanks to our investment in the talents, skills and technology of our team, we distinguish ourselves as one of the leading European companies at the forefront of digital innovation in the financial industry. For us, Open Innovation is not only perfectly in line with our core values, but it is also essential to succeed in a market as brutally competitive and constantly changing as the payment industry.

The existence of blatantly copied text on the website associated with the disputed domain name demonstrates that such website is not being used in connection with a bona fide offering of goods or services.

Therefore, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The third element requires Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. D2015-2202 (“The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.”).

Further, Paragraph 4(b) of the Policy sets out four circumstances, in particular but without limitation, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent’s website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith both in general (i.e. under paragraph 4(a)(iii) of the Policy) and in particular because the Respondent’s conduct puts the case within paragraph 4(b)(iv) of the Policy for the following reasons:

The Complainant’s MOONEY trademark is distinctive and enjoys considerable reputation within the finance industry, and in particular for Complainant’s paytech services. According, it is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to, the Complainant’s trademarks and that they registered the disputed domain name with knowledge of the Complainant’s trademarks.

There is no credible evidence that the Respondent is commonly known by the disputed domain name and the Complainant asserts that the Respondent has never been authorized or licensed by the Complainant to use the Complainant’s trademark(s) and/or register the disputed domain name, nor is there any business or other association between the Complainant and the Respondent. There is compelling evidence of targeting by Respondent. The disputed domain name comprises Complainant’s distinctive mark, with the addition of the typo-variant related term “finace”, clearly meant to represent “finance”. The disputed domain name resolves to a website offering similar services to Complainant’s, including the prominent incorporation of Complainant’s distinctive trademark “MOONEY” in connection with the related term “FINANCE”.

Respondent’s use of the disputed domain name for a website incorporating text substantially copied from Complainant’s website (as noted above) demonstrates that Respondent had actual notice of the Complainant’s trademark when registering the disputed domain name. It has regularly been held that to copy a trademark in a domain name, or use it with a slight variation, knowing that the disputed domain name is based on the trademark of another party, constitutes bad faith registration and use of the disputed domain name according to the Policy. The Panel makes that finding in the present case.

By using the disputed domain name as noted above, the Respondent is clearly intending to attract internet users for commercial gain, in a manner which would generate confusion as to the source, sponsorship, affiliation or endorsement of the site to which the disputed domain name resolves. Such conduct constitutes bad faith case within the provisions of paragraph 4(b) (iv) of the Policy. As a final point, the Panel may draw a negative inference from Respondent’s silence through these proceedings.

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith, and thus has satisfied the requirements under paragraph 4(a)(iii) and 4b. of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. MOONEYFINACE.COM: Transferred

PANELLISTS

Name	Claire Kowarsky
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DATE OF PANEL DECISION 2023-01-30

Publish the Decision
